

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

RODNEKA PERRY, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

AMAZON LOGISTICS, INC.;
AMAZON.COM, INC.; AMAZON.COM
SERVICES LLC, formerly known as
Amazon.com, LLC; and AMAZON WEB
SERVICES, INC.,

Defendants.

No. 1:23-cv-03383

Honorable John Robert Blakey

DECLARATION OF JOHN RODGERS

Pursuant to 28 U.S.C. § 1746, I, John Rodgers, declare as follows:

1. I am a Director, Last Mile Tech, Amazon Flex, employed by Amazon.com Services LLC, and have responsibility for certain functions related to the Amazon Flex Program.

2. I make this declaration based on my personal knowledge and my review of Amazon's business records. If called to testify to these facts, I would be competent to do so.

3. In my role as a Director, Last Mile Tech, Amazon Flex, I am familiar with the operation of the Amazon Flex program, the onboarding process through the Amazon Flex app, and the terms of service that prospective Amazon Flex Delivery Partners ("Delivery Partners") must review and accept before they can begin making local deliveries through the Amazon Flex smartphone application.

4. Amazon offers various products that customers around the world can purchase, including through Amazon's website and smartphone application.

5. When a customer places an order, the customer designates the location at which to receive the product(s) ordered. Although customers often designate their home or business, customers can often pick up an order from a different local destination, such as Whole Foods Market and Amazon Fresh storefronts (for products ordered from those stores), Amazon Go convenience stores, or third-party owned storefronts with an Amazon Hub Locker (self-service pickup) and/or an Amazon Hub Counter (over-the-counter pickup).

6. For orders not picked up locally by customers, Amazon contracts with certain third parties to make local customer deliveries, including Delivery Partners.

7. Amazon's "logistics" operations refer generally to the processes of coordinating and managing the movement and warehousing of products, equipment, and supplies within Amazon's facilities—in which Delivery Partners are not normally involved—as well as coordinating Amazon's external relationships with the third parties, including Delivery Partners, that make local customer deliveries.

8. For instance, third-party wholesalers, manufacturers, and sellers ship their products to Amazon fulfillment centers, where Amazon warehouses many products.

9. Once Amazon's customers place orders and designate the location at which they will receive those orders, Amazon ships the ordered items to a series of different facilities (such as sort centers, postal and other third-party distribution

centers, and delivery stations).

10. Amazon uses long-haul tractor-trailers and aircraft to move some goods from third-party wholesalers, manufacturers, and sellers to Amazon fulfillment centers and also to move some goods between Amazon's fulfillment centers, sort centers, and delivery stations.

11. Through the Amazon Flex app, Delivery Partners can sign up for offered "delivery blocks," which are described in terms of their location, date, and anticipated length of time. An offer for a delivery block shows the amount (or in some cases a range) of the Service Fees payable for the block, the type of deliveries involved, and whether customer tips are available. Delivery Partners are not required to accept any specific Amazon Flex offer or a minimum number of offers. The lengths of delivery blocks vary but commonly last between 2 to 6 hours.

12. Among other opportunities, Delivery Partners can accept delivery blocks through Amazon's "Global Specialty Fulfillment" or "GSF" umbrella of programs to deliver food, groceries, and other items stocked and/or prepared locally. GSF programs have included:

- Amazon Fresh (groceries sold by Amazon).
- Store orders (e.g., groceries picked up at Whole Foods Markets).
- Prime Now (locally stocked items with a 1 or 2-hour turnaround).
- Amazon Restaurants (items from restaurants, now discontinued).

13. Delivery Partners can also accept "Sub Same-Day" or "SSD" delivery blocks to deliver items available for same-day delivery.

14. Separate from GSF and SSD delivery blocks, a Delivery Partner can schedule delivery blocks to make “Amazon Logistics” or “AMZL” deliveries, sometimes also called “brown box” deliveries, of items warehoused in Amazon fulfillment centers.

15. Items that have originally been delivered to a fulfillment center are unloaded, sorted, and stowed there. After customers order such items, Amazon employees typically pick the ordered items from the fulfillment center’s shelves and prepare them for shipment. Other workers then load the items onto vehicle(s) for transit to another location like a sort center, other workers drive those vehicles to that location, and other workers unload these vehicles there. At a sort center, after Amazon’s employees sort the items by delivery zip code, other workers load the items onto other vehicles, other workers drive those vehicles to the delivery station, and other workers unload these vehicles at the delivery station.

16. At a delivery station, Amazon employees retrieve packages and group them into local delivery batches, which often encompass numerous orders and numerous customers’ delivery locations. The batched packages then are transferred to Delivery Partners, who deliver the batched packages to customers. Delivery Partners ordinarily do not touch packages until after they are organized (on a cart, for example, or in a sturdy canvas or nylon bag) by local delivery batches at a delivery station or other pickup location like a Whole Foods Market retail store. Delivery Partners then assume responsibility for taking the cart/bag to their personal vehicles, arranging and loading the items in their vehicles, and delivering

the batch of items to their local destinations.

17. As this overview indicates, Delivery Partners do not unload cargo from airplanes, trucks, rail cars, or ships or otherwise interact with such long-range forms of transportation. Delivery Partners are not responsible for transporting cargo to, or from, fulfillment centers. Nor are they engaged in packaging or shipping items to sort centers, postal and other third-party distribution centers, or delivery stations.

18. Instead, Delivery Partners characteristically pick up batches of pre-packaged items in their selected geographic areas and deliver those items to a number of customers in the same geographic areas using ordinary vehicles like their personal automobiles. In this way, Delivery Partners can help Amazon's customers avoid having to personally pick up orders at a retail store or Amazon Hub location.

19. Individuals seeking to sign up for Amazon Flex must first download the Amazon Flex app on a smartphone, log into the app with an Amazon account (and create one if necessary), and select the local area in which they wish to make deliveries. Individuals must then complete the Flex onboarding process, which requires prospective Delivery Partners to affirmatively agree to the Amazon Flex Independent Contractor Terms of Service ("TOS"). There have been multiple versions of the TOS.

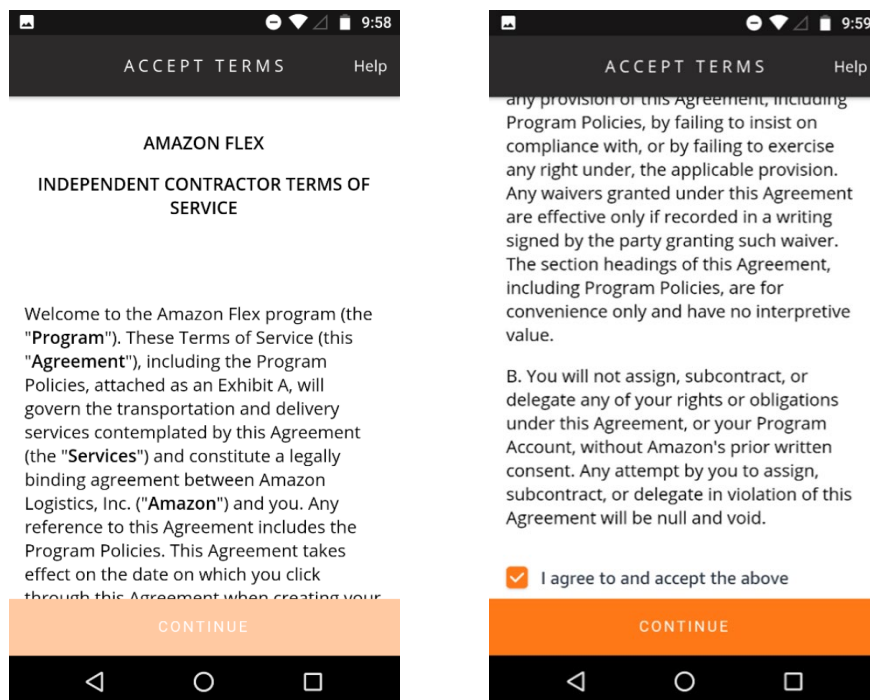
20. Amazon's records indicate that Rodneka Perry signed up to perform deliveries in the Chicago region and that she accepted the TOS on August 31, 2018,

when the TOS version attached as **Exhibit A** ("First TOS") was in effect.

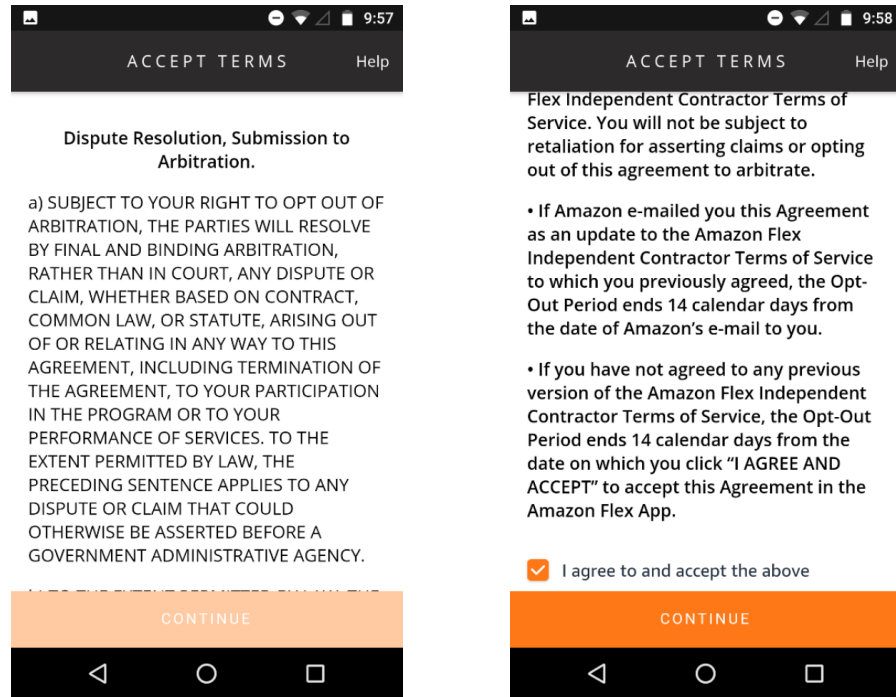
21. Amazon's records indicate that Samantha Young signed up to perform deliveries in the Chicago region and that she accepted the TOS on November 18, 2019, when the TOS version attached as **Exhibit B** was in effect ("Second TOS").

22. In signing up to participate in Amazon Flex, Perry and Young had to check a box indicating that they agreed to the then-applicable version of the TOS as a whole, and then had to check another box reaffirming that they agreed to arbitrate.

23. For Perry's first acceptance, the Amazon Flex app presented the First TOS in its entirety (by scrolling through the app) and would have resembled the following:



24. Next, Perry had to separately signify acceptance on a second screen specifically focused on arbitration that would have resembled the following:



25. For Young's first acceptance, the Amazon Flex app presented the Second TOS in its entirety (by scrolling through the app) and would have resembled the following:

ACCEPT TERMS

AMAZON FLEX

INDEPENDENT CONTRACTOR TERMS OF SERVICE

Welcome to the Amazon Flex program (the "Program"). These Terms of Service (this "Agreement"), including the Program Policies, attached as an Exhibit A, will govern the delivery services contemplated by this Agreement (the "Services") and constitute a legally binding agreement between Amazon Logistics, Inc. ("Amazon") and you. Any reference to this Agreement includes the Program Policies. If there is a conflict between the Program Policies and any other section of this Agreement, the Program Policies will prevail.

This Agreement updates and replaces any version of the Terms of Service you previously accepted. This Agreement takes effect on the earlier of the date on which you click "I agree and accept" in the box below or, if you accepted a prior version of the Terms of Service, the first date on which you provide Services after Amazon made this Agreement available in the "Legal Information" section of the Amazon Flex app and sent to your email address a hyperlink to this Agreement ("Effective Date").

YOU AND AMAZON AGREE TO RESOLVE DISPUTES BETWEEN YOU AND AMAZON ON AN INDIVIDUAL

CONTINUE

ACCEPT TERMS

reduced by such deductions or withholdings will constitute full payment and settlement to you of amounts payable under this Agreement. Throughout the term of this Agreement, you will provide Amazon with any forms, documents, or certifications as may be required for Amazon to satisfy any information reporting or withholding tax obligations with respect to any payments under this Agreement.

X. Additional Terms.

A. A party does not waive any right under any provision of this Agreement, including Program Policies, by failing to insist on compliance with, or by failing to exercise any right under, the applicable provision. Any waivers granted under this Agreement are effective only if recorded in a writing signed by the party granting such waiver. The section headings of this Agreement, including Program Policies, are for convenience only and have no interpretive value.

B. You will not assign, subcontract, or delegate any of your rights or obligations under this Agreement, or your Program Account, without Amazon's prior written consent. Any attempt by you to assign, subcontract, or delegate in violation of this Agreement will be null and void.

☐ I agree to and accept the above

CONTINUE

26. Next, Young had to separately signify acceptance on a second screen that focused on arbitration and would have resembled the following:

ACCEPT TERMS

Dispute Resolution, Submission to Arbitration.

a) SUBJECT TO YOUR RIGHT TO OPT OUT OF ARBITRATION, THE PARTIES WILL RESOLVE BY FINAL AND BINDING ARBITRATION, RATHER THAN IN COURT, ANY DISPUTE OR CLAIM, WHETHER BASED ON CONTRACT, COMMON LAW, OR STATUTE, ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT, INCLUDING TERMINATION OF THE AGREEMENT, TO YOUR PARTICIPATION IN THE PROGRAM OR TO YOUR PERFORMANCE OF SERVICES. TO THE EXTENT PERMITTED BY LAW, THE PRECEDING SENTENCE APPLIES TO ANY DISPUTE OR CLAIM THAT COULD OTHERWISE BE ASSERTED BEFORE A GOVERNMENT ADMINISTRATIVE AGENCY.

b) TO THE EXTENT PERMITTED BY LAW, THE PARTIES AGREE THAT ANY DISPUTE RESOLUTION PROCEEDINGS WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT ON A CLASS OR COLLECTIVE BASIS.

c) TO THE EXTENT PERMITTED BY LAW, THE PARTIES FURTHER AGREE THAT NO DISPUTE RESOLUTION PROCEEDING WILL BE CONDUCTED ON A REPRESENTATIVE BASIS.

d) TO THE EXTENT PERMITTED BY LAW, THE PARTIES WAIVE ANY RIGHT TO PARTICIPATE IN OR RECEIVE ANY RELIEF FROM ANY NON-INDIVIDUAL PROCEEDING REFERENCED ABOVE.

CONTINUE

ACCEPT TERMS

k) WHETHER TO AGREE TO ARBITRATION IS AN IMPORTANT BUSINESS DECISION. If you wish to opt out of this arbitration agreement—meaning, among other things, that you and Amazon would be free to bring claims against each other in a court of law—you can opt out by sending an e-mail to amazonflex-support@amazon.com before the end of the Opt-Out Period (defined below). The e-mail must include your name and a statement indicating that you are intentionally and knowingly opting out of the arbitration provisions of the Amazon Flex Independent Contractor Terms of Service. You will not be subject to retaliation for asserting claims or opting out of this agreement to arbitrate.

• If Amazon e-mailed you this Agreement as an update to the Amazon Flex Independent Contractor Terms of Service to which you previously agreed, the Opt-Out Period ends 14 calendar days from the date of Amazon's e-mail to you.

• If you have not agreed to any previous version of the Amazon Flex Independent Contractor Terms of Service, the Opt-Out Period ends 14 calendar days from the date on which you click "I AGREE AND ACCEPT" to accept this Agreement in the Amazon Flex App.

☐ I agree to and accept the above

CONTINUE

27. Under Section 13 of both the First TOS and the Second TOS, Delivery Partners agreed that Amazon had the ability to modify the TOS by providing notice to the Delivery Partner through the Amazon Flex app or otherwise providing notice. These modification provisions further explained that if the Delivery Partner continued to perform Amazon Flex services after the modification's effective date, the Delivery Partner agreed to be bound by the new terms.

28. On several occasions, Amazon has distributed notice of TOS updates to then-active Delivery Partners by sending an email to the email address each such driver agreed to keep current.

29. On or about October 3, 2019, Amazon emailed notice of a TOS update to Perry and other then-active Delivery Partners. The email, which is attached as **Exhibit C**, bore the subject line, "Update to Amazon Flex Terms of Service." The new version of the TOS announced in this email was the Second TOS, attached as **Exhibit B**.

30. Between April 29, 2021 and May 1, 2021, Amazon emailed notice of another TOS update to Perry, Young, and other then-active Delivery Partners. This email, which is attached as **Exhibit D**, bore the subject line, "Update to Amazon Flex Terms of Service." The new version of the TOS announced in this email is attached as **Exhibit E** ("Third TOS").

31. Amazon's records indicate that Perry accepted the Second TOS by continuing to perform deliveries after the 2019 update email, including numerous delivery blocks between November 2019 and December 2020.

32. Amazon's records indicate that Perry accepted the Third TOS by continuing to perform deliveries after the 2021 update email, including numerous delivery blocks between June 2021 and August 2021 and between December 2022 and February 2023.

33. Amazon's records indicate that Young accepted the Third TOS by continuing to perform deliveries after receiving the 2021 update email, including numerous delivery blocks between June 2021 and January 2023.

34. Amazon's records further indicate that neither Perry nor Young ever opted out of any TOS's arbitration clause.

35. In 2019, Amazon introduced an identity verification process to Amazon Flex, whereby Delivery Partners submit photographs of themselves and of their driver's licenses through the Amazon Flex app. That process was and is intended to protect Amazon customers and the goods that the Delivery Partners deliver.

36. At the time that Amazon introduced the identity verification process to the Flex app, Amazon also distributed the Second TOS to all then-active Delivery Partners.

37. Separately, in order to participate in the identity verification process described above, a Delivery Partner in the United States must first view and agree to an "Identity Verification Consent" shown to each Delivery Partner via the Flex app. That Identity Verification Consent was introduced to the Flex app in November 2018 and remains in the Flex app today. The consent's language has changed only minimally since its introduction to the app. From November 2018 to

January 2020, the Identity Verification Consent read as follows:

As a condition of applying to be an Amazon Flex delivery partner, you consent to allow Amazon Flex to verify your identity and share your picture with our customers for identification purposes. Specifically, you agree that Amazon Flex may collect, store, use, and derive biometric data from your submitted pictures (including your pictures we already have on file), driver's license, or government-issued ID (such pictures and derived biometric data collectively are your "Identity Data"). Amazon Flex will use your Identity Data to confirm your identity from time to time. Amazon Flex will keep your Identity Data for as long as permitted by applicable law or until you request deletion, following either of which Amazon Flex will delete your Identity Data as detailed in the FAQ.

...

By tapping ACCEPT, I certify that I have read, understand and accept all statements in the Non-Fair Credit Reporting Act Acknowledgments And Authorizations For Background Check And Identity Verification Consent, and that I have read and understand any applicable state notices.

38. From January 2020 to August 2021, the Identity Verification Consent read as follows:

As a condition of delivering Amazon packages using the Amazon delivery application, you consent to allow Amazon to verify your identity and share your photograph with our customers for identification purposes. From time to time, Amazon may require you to submit photographs to confirm your identity. Using your photograph, we may create a facial scan or similar biometric identifier, which we refer to as "Biometric Information," and collect, store, and use Biometric Information from your submitted photographs (including those we already have on file) and your driver's license or government-issued ID. You agree to Amazon's Biometric Information retention policy, which can be found by copying and pasting the following link in to your preferred browser: <https://flex.amazon.com/faqs/>.

...

By tapping ACCEPT AND CONTINUE, I certify that I have read these Additional Acknowledgments And Authorizations For Background Check and that I understand and accept all statements included

within, including any state or local notices that apply to me.

39. From August 2021 to the present, the Identity Verification Consent read as follows:

As a condition of delivering Amazon packages using the Amazon delivery application, you consent to allow Amazon to verify your identity and share your photograph with our customers for identification purposes. From time to time, Amazon may require you to submit photographs to confirm your identity. Using your photograph, we may create a facial scan or similar biometric identifier, which we refer to as “Biometric Information,” and collect, store, and use Biometric Information from your submitted photographs (including those we already have on file) and your driver’s license or government-issued ID. Amazon’s Biometric Information retention policy can be found by copying and pasting the following link into your preferred browser: <https://flex.amazon.com/faqs/>.

...

By checking the box below and tapping SUBMIT, I certify that I have read, understand, and accept all statements in Amazon’s Biometric Information retention policy.

40. As reflected in the language for each Identity Verification Consent, only Delivery Partners who take some affirmative action (such as tapping “ACCEPT” or checking an acceptance box) and thereby express their consent to the Identity Verification Consent form are able to engage in the identity verification process that involves uploading images of themselves to the Flex App.

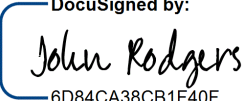
41. Amazon also maintains a webpage with “Frequently asked questions about Amazon Flex” (the “Flex FAQs”). The Flex FAQs are publicly available at <https://flex.amazon.com/faq>. Under the heading “What is Amazon’s Biometric Information retention policy?” appears the following:

To use the Amazon delivery app, Amazon requires that users provide a photo to help us identify them. Using this photo, we may create a facial

scan or similar biometric identifier, which we refer to as “Biometric Information.” This policy governs Amazon’s retention of users’ Biometric Information. Amazon may retain a user’s Biometric Information for up to 30 days after it is created for fraud detection and investigation purposes, whether or not the user continues using the Amazon delivery app during this period. After 30 days, Amazon will promptly delete the Biometric Information.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 5, 2023, in Bellevue, Washington.

DocuSigned by:

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John Rodgers